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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; AND SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-VCF

ORACLE'S OPPOSITION TO RIMINI'S EMERGENCY MOTION (1) TO STAY ENFORCEMENT OF PERMANENT INJUNCTION PENDING APPEAL, OR ALTERNATIVELY (2) FOR A TEMPORARY SIXTY-DAY STAY

Judge: Hon. Larry R. Hicks

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I. INTRODUCTION

After a month-long trial in 2015, a jury found that Rimini infringed 93 Oracle copyrights and violated state computer-fraud statutes. Thereafter, this Court exercised its discretion and entered a permanent injunction barring Rimini's improper practices, but in late 2016, Rimini convinced the Ninth Circuit to stay that injunction pending appeal. While Rimini did obtain reversal of the computer-fraud claims, Rimini lost its appeal on every single copyright claim in this case. Consistent with the Ninth Circuit's instructions on remand, this Court again issued a permanent injunction barring Rimini's unlawful practices. Now, almost three years since the jury's verdict, Rimini improperly urges that another stay pending appeal should issue, even though Rimini has no further ability to appeal Oracle's copyright claims. There is no reason to give Rimini more time to continue its infringing activities. The permanent injunction should not be stayed.

Rimini's arguments satisfy none of the four factors governing a stay motion. First, far from providing a "strong showing" that it will succeed on the merits of its appeal, Rimini's motion rehashes the same meritless arguments this Court rejected in issuing the injunction and misreads and misrepresents the Ninth Circuit's opinion in this case. The Ninth Circuit upheld the jury's copyright verdict, and Rimini has exhausted its appellate rights; thus, Rimini cannot now establish any "strong showing" of likely success on appeal. Second, Rimini's unsubstantiated claim that it will suffer "irreparable injury" absent a stay falls far short of the showing required for a stay, and is completely belied by Rimini's statements to the public and the SEC since the Court issued its injunction. Third, Rimini's unsupported claim that a stay will not harm Oracle because Rimini asserts it no longer infringes the copyrights is both factually and legally insufficient to justify a stay. Fourth, the public interest (as this Court already concluded in issuing the injunction) is best served by enjoining Rimini's future copyright infringement, and nothing in Rimini's motion provides any basis to conclude otherwise.

Entirely undercutting Rimini's stay arguments to this Court are Rimini's own out-of-court admissions to the public and the SEC since this Court's issuance of the new injunction. Indeed, less than a week after its emergency filing with this Court claiming irreparable harm,

Rimini told investors, customers, the SEC, and the world at large that this Court's injunction places "No Limit on the Sale or Delivery of any Services for Oracle Products"[1]:

> **No Limit on the Sale or Delivery of any Services for Oracle Products**
>
> As was the case with the previous injunction issued in 2016 that was vacated by the Court of Appeals in January 2018, the renewed injunction does not limit any sale of service for any Oracle products or restrict service deliverables Rimini Street provides its clients, but rather defines the manner in which Rimini Street may continue to provide support services for certain Oracle product lines. However, compliance with the injunction will increase the amount of labor required for Rimini Street to complete its support deliverables for some clients, thereby costing the Company between $1 million and $4 million per year. For that reason and others, the Company has sought a stay of the injunction pending appeal.

The same public statement acknowledges that Rimini's only claimed harm is monetary, and thus not irreparable. *See id.*

Finally, the simple fact that the Ninth Circuit issued a stay in the prior appeal does not support a stay here. The Ninth Circuit's concern with regard to the injunction stemmed from the Court's view of the state law claims, which the Ninth Circuit eventually overturned. Rimini's contrary arguments rely on a gross misreading of the Ninth Circuit's opinion, which affirmed on the copyright infringement liability supporting the present injunction (despite Rimini's strenuous arguments to the contrary). Therefore, Rimini's likelihood of success on the merits and showing sufficient irreparable harm is minimal to none this time.

The Court's injunction is well-founded, properly enjoins Rimini's infringing conduct, and complies fully with the Ninth Circuit's opinion. Rimini's motion for a stay should be denied.

II. ARGUMENT

A. Legal Standard for Motion to Stay

The bar to obtaining a stay pending appeal is high, and Rimini's unsupported motion falls well short. Because "[a] stay is an intrusion into the ordinary processes of administration and judicial review," a stay "is not a matter of right" but "an exercise of judicial discretion" that may properly be declined "even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 427, 433 (2009) (citations omitted).

[1] Polito Decl., Ex. 1 (8/22/18 Press Release); Polito Decl., Ex. 2 (Rimini St., Inc., Current Report (Form 8-K), at 4 (Aug. 23, 2018)).

As this Court has noted, a "stay pending appeal is an 'extraordinary remedy' that may be awarded only upon a clear showing that an appellant is entitled to such relief." ECF No. 1094 at 3:4–6. Rimini, as the party requesting the stay, "bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433–34. The determination whether to issue a stay is governed by four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The first two factors "are the most critical" and establish minimum thresholds that must be met for issuance of a stay. *Nken*, 556 U.S. at 434. The Supreme Court requires a "strong showing" on that first critical factor, likelihood of success on the merits. *Id.* The second critical factor requires Rimini to demonstrate *irreparable* harm, not just harm to its business or unplanned expenses. Irreparable harm is more than just a factor; it is the "bedrock requirement" for a stay. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011). It "requires an even stronger showing: the [movant] must demonstrate that irreparable harm is 'probable,' or more likely than not, if the stay is denied." *Childs v. Stafford*, 2012 WL 12875370, at *3 (S.D. Cal. Apr. 26, 2012), *aff'd,* 551 F. App'x 353 (9th Cir. 2014) (citing *Leiva-Perez*). If the movant has not made a threshold showing of irreparable harm, "a stay may not issue, regardless of the [movant's] proof regarding the other stay factors." *Leiva-Perez*, 640 F.3d at 965.

B. Rimini's Stay Request Fails at the Outset Because It Merely Repeats Previously Rejected Arguments

This Court has correctly rejected Rimini's arguments for a stay multiple times—when it entered its current injunction, entered its previous injunction, and denied Rimini's previous request for stay. Nor does any decision of the Ninth Circuit suggest a contrary result. To be sure, the Ninth Circuit could have accepted Rimini's arguments about the propriety and scope of the prior injunction, but the Court declined to do so—and gave no indication that the prior injunction was unlawful or would be inappropriate based solely on Rimini's copyright violations.

Oracle USA, Inc. v. Rimini Street, Inc., 879 F.3d 948, 964 (9th Cir. 2018) ("We express no view on the propriety or scope of any injunctive relief[.]").

Rimini's rehashing of previously rejected arguments is alone sufficient to deny the motion. The "mere recitation of arguments previously made and rejected . . . is not nearly enough to persuade [the Court] that [the movant] is likely to succeed on appeal." *Endress + Hauser, Inc. v. Hawk Measurement Sys. Pty. Ltd.*, 932 F. Supp. 1147, 1149 (S.D. Ind. 1996); *see also Fullmer v. Mich. Dep't of State Police*, 207 F. Supp. 2d 663, 664 (E.D. Mich. 2002) (despite similarity of factors, party seeking stay will have more difficulty establishing likelihood of success "due to the difference in procedural posture," requiring "likelihood of reversal"). Thus, "a motion for stay pending appeal is not a second bite at the . . . injunction apple." *Coal. for Econ. Equity v. Wilson*, 1997 WL 70641, at *5 (N.D. Cal. Feb. 7, 1997); *see also Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 2008 WL 5210843, at *2 (D. Del. Dec. 12, 2008) (denying motion for stay of permanent injunction because "the Court has considered several of these factors already in considering whether to issue a permanent injunction, and the Court's analysis is unchanged in the context of a stay").

C. Rimini's Stay Request Fails Under All Four Factors

Application of the four factors mandates denial of Rimini's "emergency" stay request.

1. Rimini Is Not Likely to Prevail on Appeal

Rimini asserts it has a substantial case for relief based on no less than *ten* "principal" arguments—all of which Rimini assures this Court are "serious" and will lead to success on appeal. Mot. at 8:12–16. Rimini's scattershot approach undercuts any notion that it has a meritorious argument for appeal—and no number of meritless arguments can justify a stay. Rimini provides no basis for this Court or the Ninth Circuit to question this Court's well-founded determinations about the appropriateness and scope of injunctive relief.

a. Rimini's Arguments that the Injunction Is Inconsistent with the Ninth Circuit's Opinion Are Meritless

Four out of Rimini's ten arguments charge this Court with acting inconsistently with the Ninth Circuit's opinion in this case. Not one of them has merit. Rimini claims this Court "made

errors of law in construing the scope of" that opinion, Mot. at 8:18, which allegedly "infect" the renewed injunction. *Id.* at 17:8–9. It also argues that this Court's renewed injunction is somehow broader than what the Ninth Circuit's opinion allows. *Id.* at 16:3–17:1. Each of these arguments is based on an obvious misreading of the Ninth Circuit's opinion. Moreover, Rimini made all of them before to this Court when it opposed the renewed injunction (ECF No. 1130 at 1:24–2:10, 2:14–18, 15:19–27, 18:4–22:12); Oracle rebutted them (ECF No. 1139 at 1:5–13, 1:21–2:23, 3:4–23, 9:17–10:11); and this Court properly rejected them in issuing the renewed injunction. Rimini raises no new evidence or argument about the Ninth Circuit opinion, and its recycled claims fail to raise a substantial likelihood of success on appeal. This Court properly read the Ninth Circuit opinion, and its injunction is fully consistent with that opinion.

In contrast, Rimini's arguments in support of a stay contradict and misrepresent the Ninth Circuit's opinion. Its various mischaracterizations fall into two broad categories.

First, Rimini falsely claims that it was "erroneous" for this Court to recognize that the Ninth Circuit affirmed the Court's and jury's findings regarding Oracle's liability for copyright infringement. Mot. at 8:24. The Ninth Circuit specifically stated that while it reversed on the state law claims, "we affirm the judgment with respect to the copyright infringement claims." *Oracle*, 879 F.3d at 953. The Ninth Circuit indisputably affirmed Rimini's liability for copyright infringement for *all four* of Oracle's software products, and thus *all 93* of the copyright registrations at issue. *Id.* at 954 (explaining that Rimini "challenges the jury's finding of copyright infringement with respect to" J.D. Edwards and Siebel "on two grounds," and concluding "[n]either of these arguments is persuasive"); *id.* at 958–59 (noting Rimini's arguments that it did not infringe PeopleSoft copyrights "are without merit"); *id.* at 960 ("The record supports the district court's conclusion" that Rimini infringed as to PeopleSoft.); *id.* ("[W]e affirm the district court's determination of copyright infringement as to Database.").

Several of Rimini's specific allegations about the Ninth Circuit's opinion are particularly baseless. For example, Rimini alleges that the Ninth Circuit did not address any current cross-use and only addressed future cross-use, and that as a result this Court's injunction of current cross-use is improper. Mot. at 10:6–9. In fact, in rejecting Rimini's arguments about JD

Edwards and Siebel licenses, the Ninth Circuit addressed both current and future cross-use, holding that "each of the licenses at issue here 'pointedly limits copying and use to support the *Licensee*,'" and any "work that Rimini performs under color of a license held by a customer for other existing customers" is not permitted. *Oracle*, 897 F.3d at 957. Moreover, Rimini's claim that the Ninth Circuit "avoided deciding whether cross-use cannot be enjoined at all because it does not constitute copyright infringement" also fails. Mot. at 10:10–11. The Ninth Circuit already held that Rimini has waived the argument. *Oracle*, 897 F.3d at 957 & n.4.

Moreover, Rimini falsely implies throughout its motion (*e.g.* at 1:2, 1:27, 6:25, 11:3, 19:6, 23:16), and also in its recent press release, that the Ninth Circuit concluded that most of its conduct amounted to "lawful competition" with Oracle. Not so. The Ninth Circuit recognized the competition as "lawful" only in the sense that Oracle's licenses allow third-party support, *so long as* that support is provided in a manner consistent with the terms of the license: "But in order to compete effectively, Rimini also needed to . . . copy[] Oracle's copyrighted software, which, unless allowed by license, would be copyright infringement." *Oracle*, 897 F.3d at 952. Rimini disregards this discussion, in the same paragraph it repetitively cites. Indeed, after this introductory remark, the Ninth Circuit *affirmed across the board* Rimini's liability for infringing Oracle's copyrights. *Id.* at 953. The competition tactics at issue in this case *were not* "lawful."

Second, Rimini claims that this Court may only enjoin the "acts of infringement within the judgment . . . that the Ninth Circuit specifically affirmed on appeal." Mot. at 17:8–14, 8:20–21. But the Court did not reverse on any copyright infringement finding. It is at best grossly misleading to state that the "Ninth Circuit did not deem [certain conduct] infringing." Mot. at 9:22–23. The Ninth Circuit merely declined to address all of Rimini's infringing conduct because *it already had affirmed liability*. *See Oracle*, 879 F.3d at 953, 954, 960 & n.6. The fact that the Ninth Circuit affirmed without addressing every specific infringing *action* discussed by this Court in no way limits this Court's discretion in issuing the renewed injunction. Nothing in the Ninth Circuit opinion implies that this Court may not enjoin conduct *it* concluded was infringing, which findings were undisturbed on appeal despite Rimini's attacks on them. Rimini's contrary arguments turn the mandate on its head. *See United States v. Thrasher*, 483

F.3d 977, 982 (9th Cir. 2007) ("[A] district court could not revisit its already final determinations unless the mandate allowed it."); *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) ("[A] court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case.").

For example, Rimini points to the footnote in the Ninth Circuit's opinion where, after it had already concluded Rimini "infringe[d] as to PeopleSoft," the Court declined to address the two other theories supporting liability as to PeopleSoft—*because it affirmed such liability regardless*. *Oracle*, 879 F.3d at 960 & n.6. Rimini twists this common appellate-court practice of only discussing as much of a district court opinion as is necessary to affirm into a claimed implicit rejection by the Ninth Circuit of this Court's undisturbed findings. Rimini offers no support for this absurd proposition. Relatedly, Rimini argues that the Ninth Circuit implicitly disallowed this Court from reissuing "the *same*" injunction since it vacated and sent the injunction back for reconsideration. Mot. at 17:14–22. But of course the Ninth Circuit did no such thing. *Oracle*, 879 F.3d at 964 ("We express no view on the propriety or scope of any injunctive relief . . . ."). The Ninth Circuit considered all of Rimini's arguments against both liability for copyright infringement and the scope and propriety of the prior injunction, and the Ninth Circuit rejected all of Rimini's copyright liability-related arguments and declined to accept *any* of Rimini's arguments against the injunction. The Ninth Circuit gave no indication that its decision regarding what Rimini calls the "narrow issue" of local hosting left further "issues for future litigation." Mot. at 22:4. Instead, it affirmed that Rimini was liable for copyright infringement. *Oracle*, 879 F.3d at 960 & n.6. So too with Rimini's arguments that the Ninth Circuit did not address alternative infringing actions for JD Edwards and Siebel. Mot. at 16:13–16.[2]

[2] For another example, in arguing the Ninth Circuit did not address whether client licenses permit the challenged conduct (even though it explicitly rejected that argument, *Oracle*, 879 F.3d at 957), Rimini cites a footnote (Mot. at 10:4–5 (citing *Oracle*, 879 F.3d at 953 n.2)) stating that the Court did not address a different argument regarding documentation copyrights because "Rimini does not appeal" that jury finding. *Id.* (emphasis added). That Rimini thinks it may benefit at this stage because the Ninth Circuit did not address an issue *that Rimini did not appeal* reveals the absurdity of its arguments based on the scope of the Ninth Circuit opinion.

Rimini's argument that the renewed injunction is "overbroad" because it "reaches far more conduct than the Ninth Circuit found to be infringing" (Mot. 16:7–10) is another iteration of this same error. Rimini admits (as it must) that injunctions may cover all "adjudicated conduct." *Id.* at 16:3–4. As discussed above, the Ninth Circuit's *affirmance* of Rimini's copyright liability does nothing to *limit* the conduct this Court adjudicated as infringing Oracle's copyrights, *see, e.g.*, ECF No. 474 at 13.

The injunction does not reach "lawful" conduct. Mot. at 16:23–28. Rimini cites no case law (because it cannot) for the proposition that actions "cannot be enjoined" if "an appellate court" has not yet ruled on the legality of those actions. *Id.* If this were true, no injunction could ever issue before the case was appealed—a patently absurd claim. Indeed, the Ninth Circuit in this case remanded for this Court to "weigh the *eBay* factors with respect to the copyright claims alone" because this Court previously had "assessed the four factors by reference to *both* the copyright and the CDAFA claims." *Oracle*, 879 F.3d at 964 (emphasis added). Nothing about this instruction *limited* the "copyright claims" on which this Court may base the injunction, and as this Court has repeatedly determined, the injunction bars only illegal conduct.

Rimini's reliance on cases standing for the proposition that issues not necessarily reached by an appellate court sometimes do not have preclusive effect in *subsequent* litigation are irrelevant. Mot. at 8:25–9:7 (citing *City of Colton v. Am. Promotional Events Inc.-West*, 614 F.3d 998, 1004 n.4 (9th Cir. 2010), and *Aviall, Inc. v. Ryder Sys. Inc.*, 110 F.3d 892, 897–98 (2d Cir. 1997)). This is not a subsequent litigation—it is the *same* litigation involving the *same* findings by this Court and the jury that Rimini infringed in all the ways the injunction addresses. And the Ninth Circuit has now affirmed Rimini's liability for that infringement. The law of the case says that this Court should not (and indeed, cannot) reconsider the issues it has already decided and have been affirmed. *Lummi Indian Tribe*, 235 F.3d at 452. Rimini also presented this argument and these same cases to the Court before, and the Court necessarily rejected them. *See* ECF Nos. 1158, 1159.

What is more, the Ninth Circuit pointed out that issues regarding an injunction's "scope" are reviewed for "abuse of discretion." *See Oracle*, 879 F.3d at 964. But Rimini offers no

argument why this Court abused its discretion in concluding that the undisturbed factual findings support the injunction's scope. As Rimini admits, it already submitted its overbreadth objections to this Court, which rejected them. Mot. at 16:19–22. Rimini offers no new reason to think that *this* injunction is overbroad—save for its misreading of the Ninth Circuit opinion.

b. Rimini's Attacks on this Court's Finding that Oracle Will Be Irreparably Harmed Absent an Injunction Are Meritless

Rimini repeats its argument that Oracle failed to prove it would suffer irreparable harm in the absence of an injunction. Mot. at 10:21–23. Rimini's chief argument is that there is insufficient evidence that Rimini's conduct *caused* the harm which Oracle has suffered. *Id.* at 11:8–12:21. But Rimini's challenge to this Court's causal determination is a factual challenge which is reviewed only for clear error on appeal. *Oracle*, 879 F.3d at 964. Rimini presents no reason that this Court clearly erred in its conclusion that Rimini's actions caused Oracle harm.

Moreover, prior to this motion, Rimini extensively briefed this very argument to this Court on three separate occasions (ECF No. 1130 at 8:7–10:1, 11:6–14:13; ECF No. 1069 at 5:20–28; ECF No. 905 at 12:16–24), and this Court rejected it all three times (ECF No. 1164; ECF No. 1094; ECF No. 1065). "Here, the court *once again* finds that Rimini Street's infringement of ninety-three separate copyright registrations over four of Oracle software product lines . . . irreparably injured Oracle's business reputation and goodwill." ECF No. 1164 at 6:6–9 (emphasis added). Rimini offers no new reason that this Court should come to a different result now. Indeed, Rimini admits that it "previously documented" the evidence it views as supporting this argument. Mot. at 12:14–16. And the competitive injuries found by this Court are classic examples of irreparable harm. *See Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013); *Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012). Instead of rebutting these, Rimini quibbles over *evidentiary* questions (Mot. at 11–12) that also fail to present *legal reasons* why it will succeed on appeal, and that this Court already rejected.

Rimini again attacks this Court's reliance on *Presidio Components* and *Grokster*. Mot. at 10:25, 12:22. As before, Rimini misinterprets those and other cases. First, Rimini claims that

Presidio Components, Inc. v. Am. Tech. Ceramics Corp., 702 F.3d 1351 (Fed. Cir. 2012), does not apply because that case involved a right to exclude a direct competitor, whereas Rimini says it is a lawful competitor in a market for after-license services. Mot. at 10:25–11:4. It does not matter that Rimini claims it could compete *without infringing Oracle's copyrights*. That does not alter Oracle's right to prevent Rimini from *infringing Oracle's copyrights* to compete with Oracle—just as in *Presidio*, 702 F.3d at 1362. Rimini also attempts to distinguish this case from *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 518 F. Supp. 2d 1197 (C.D. Cal. 2007), claiming (without support) that the well-established rule that a Court may still enjoin an infringer that has ceased its conduct *only applies* to non-innocent infringers. But as discussed below, *infra* Section II.C.1.c, this Court has rightly rejected Rimini's purported exemption from injunctions for innocent infringers at every stage of these proceedings.

Similarly, Rimini misinterprets the Ninth Circuit's opinion by asserting that this Court's finding "was impermissibly premised on the now-reversed computer hacking claims." Mot. at 6:28–7:1. Not so. The Ninth Circuit pointed to this Court's prior irreparable harm finding as an "example" of how this Court "assessed the four factors by reference to *both* the copyright and the CDAFA claims." *Oracle*, 879 F.3d at 964. But the Ninth Circuit cast *no doubt whatsoever* on this Court's irreparable harm finding. *Id.* ("[w]e express no view"). Instead, it remanded for this Court to consider each *eBay* factor based on copyright infringement alone. The Ninth Circuit provided no "additional support" (Mot. at 7:2–3) for Rimini's argument against this Court's finding of irreparable harm caused by Rimini's copyright infringement.

Rimini also argues that the jury's award of $35 million in actual damages is adequate to *fully* compensate Oracle. Mot. at 14–15:10. Rimini made this argument before (ECF No. 1130 at 14:14–15:8), Oracle demonstrated its inconsistency with the evidence and the case law (ECF No. 1139 at 6:9–7:17), and this Court explicitly rejected it (ECF No. 1164 at 7:16–8:19). In issuing the current injunction, this Court found that "certain harms suffered by Oracle as a result of Rimini Street's conduct like lost market share and erosion of company goodwill are intangible" and thus "difficult to quantify and compensate." ECF No. 1164 at 7:20–25 (citing *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1154 (9th Cir. 2011)). This Court also held that the

"copyright infringement damages in this action were uniquely complex and difficult to determine," *id.* at 7:26–27, especially since the case involves the loss of the right to exclude others. *Id.* at 8:14–19. Rimini argues in response that juries are capable of deciding complex issues, but offers no reason to question this Court's conclusion that the jury did not (and could not) completely compensate Oracle due to the unique facts of *this case*. Rimini's argument fails for the same reasons as before.

c. The Jury's Finding of Innocent Infringement Is No Bar to an Injunction

At every stage of the dispute over an injunction, Rimini has argued that the jury's finding that Rimini's copyright infringement was "innocent" somehow "precludes . . . any injunction at all." ECF No. 1130 at 16:18–19; *see also id.* at 16:18–17:1; ECF No. 1069 at 4:23–5:6 (citing same cases Rimini cites now, Mot. at 13:3–14:13). The Copyright Act, which provides this Court with discretion to issue an injunction, contains no such limitation. *See* 17 U.S.C. § 504. Had Congress wished to limit injunctive relief to cases where a party engaged in "willful" infringement, Congress could have included that limit in the statute. Congress did not.

Since the statutory language plainly contradicts Rimini's argument, it is unsurprising that Rimini still has failed to cite a single case holding that an "innocent" copyright infringer is immune from injunctive relief. Moreover, Rimini raised all of its arguments based on the jury's finding of innocent infringement in the Ninth Circuit as grounds for rejecting any possibility of injunctive relief. The Ninth Circuit did not accept these arguments—for good reasons. And its remand evinces no limitation on this Court's ability to impose injunctive relief based on Rimini's copyright violations.

Rimini continues to assert that no case exists where a court has issued an injunction against an innocent infringer. Mot. at 13:25–28. Rimini is wrong. *See, e.g.*, *D.C. Comics Inc. v. Mini Gift Shop*, 912 F.2d 29, 36 (2d Cir. 1990) (affirming a finding of "innocent infringement," an award of statutory damages, and the issuance of "a permanent injunction . . . to deter future infringements"); *De Acosta v. Brown*, 146 F.2d 408, 410 (2d Cir. 1944) (affirming an injunction as "clearly correct" against a defendant whose infringement was "innocent"); *Broadcast Music,*

Inc. v. Coco's Dev. Corp., 1981 WL 1364, at *2 (N.D.N.Y. 1981) (issuing a permanent injunction where the defendant "was not aware nor had he reason to believe that his acts constituted an infringement of copyright"); *CyberMedia, Inc. v. Symantec Corp.*, 19 F. Supp. 2d 1070, 1078–79 (N.D. Cal. 1998) (issuing injunction even assuming innocent conduct, and stating that "[i]nnocent intent generally is not a defense to copyright infringement, and injunctions may be issued without a showing of willful or deliberate infringement"). Rimini addresses none of these cases and merely cites the same cases that failed to establish this point previously—those cases are no more relevant now, as they still largely involve Lanham Act discussions of trademark infringement where no harm had been established. ECF No. 1139 at 5:18–28. Thus, this Court's injunction, rejecting Rimini's argument, is not "novel[]." Mot. at 18:2.

Rimini also repeats its meritless argument that this Court violated the Seventh Amendment's Reexamination Clause. Mot. at 13:3–17. That argument rests on a mischaracterization of this Court's opinion and yet another misunderstanding of law. First, this Court did not base the renewed injunction on Rimini's state of mind. Rather it referred to Rimini's "conscious disregard for Oracle's software copyrights" in the section discussing irreparable harm to *Oracle*, noting that Rimini's use of Oracle's software "enabled Rimini to rapidly build its business from a new and unknown company . . . to a major competitor of Oracle." ECF No. 1164 at 6:15–18. That statement is followed by a discussion of Rimini's *conduct* and how it damaged Oracle. The relevant finding, then, is addressed to the nature of Rimini's conduct, not to the jury's finding of "innocence" (*i.e.*, Rimini's state of mind). Nothing in the jury's findings precluded this Court from relying on the extremely damaging effect of Rimini's conduct, recognized by the jury in its award of maximum statutory damages, in concluding that irreparable harm would result to Oracle absent an injunction. Second, the Seventh Amendment is not even applicable here because the Reexamination Clause comes into play only when a finding *necessary* to support equitable relief has been made by the jury. *See Teutscher v. Woodson*, 835 F.3d 936, 951 (9th Cir. 2016). Here, neither "conscious disregard" nor non-innocence is a prerequisite for injunctive relief. 17 U.S.C. § 502(a). There is no reason

for this Court to accept this variation of Rimini's argument that its "innocent" state-of-mind exempts it from injunctive relief.

d. The Terms of the Injunction Are Clear and Within the Scope of the Court's Findings

Rimini refuses to accept the injunction's plain terms, arguing that it is "impermissibly vague," and purports not to understand ordinary language. For example, Rimini asserts that terms like "use," "benefit," and "support" are ambiguous (Mot. at 15:11–28)—but these words are the same ones the Court interpreted in the licenses and that the parties had no trouble using at trial. Rimini's challenge here merely seeks to re-litigate the rulings underlying the injunction's terms. Rimini also argues that the Ninth Circuit's use of the word "reconsideration" means that the terms of this injunction should not be substantially the same as those of the last injunction. Mot. at 15:11–13. But the Ninth Circuit put no such thumb on the scale when it instructed this Court to reconsider the *eBay* factors in light of its and the jury's copyright-infringement findings alone.

And, of course, the injunction is far more specific than Rimini's selectively quoted words suggest. Based on the substantial evidence presented at trial and considered by the Court, including many Oracle licenses and many witnesses' testimony, the injunction prohibits Rimini from "us[ing] a specific licensee's . . . software or documentation other than to support the specific licensee's own internal data processing operations" and from using a licensee's "environment to develop or test software updates or modification for the benefit of any other licensee." ECF No. 1166 ¶¶ 4, 6. In context, these terms clearly enjoin the cross-use and other unlicensed Rimini activity that underlie the infringement findings in the first place. The ease with which Rimini claims to have determined to what extent its current support processes violate the terms of the injunction contradicts its argument that those terms are ambiguous.[3] In its press releases and SEC filings, Rimini has not warned investors that it cannot determine what conduct the injunction prohibits. To the contrary, Rimini has claimed that it can comply with the

[3] *See* Polito Decl., Ex. 1 ("the renewed injunction does not limit any sale of service for any Oracle products or restrict service deliverables Rimini Street provides its clients, but rather defines the manner in which Rimini Street may continue to provide support services").

injunction by altering various business practices.

Rimini raised these arguments to this Court when it considered the proposed injunction (ECF No. 1130 at 22:13–23:28), Oracle demonstrated why they are baseless (ECF No. 1117 at 22–23), and this Court granted the injunction. They provide no basis for a stay.

e. The Injunction Does Not Violate the First Amendment

Lastly, Rimini's claim that the injunction violates the First Amendment is meritless. *See* Mot. at 17:2–7. Rimini asserts that enjoining a party liable for copyright infringement from accessing the "source code" of the at-issue software "*to carry out development and testing*" (ECF No. 1166 ¶¶ 8, 12 (emphasis added)) is *just like* a court enjoining someone from reading a copyrighted book or watching a copyrighted movie. Mot. at 17:5–7. That comparison has no support in logic or law.

The two cases Rimini string cites are inapposite. Mot. at 17:2–4. First, *Eldred v. Ashcroft*, 537 U.S. 186, 219 (2003), stands for the basic proposition that ideas are not copyright-protected, but expressions are. Rimini's failure to analyze *Eldred* is perhaps because the case offers *no support* for its supposed First Amendment right to access software to infringe Oracle's copyrights during the course of development and testing software updates. Second, *Garcia v. Google, Inc.*, 786 F.3d 733 (9th Cir. 2015), held merely that "censor[ing] and suppress[ing] a politically significant film—based upon a dubious and unprecedented theory of copyright"—"deprived the public of the ability to view firsthand" the politically salient film. *Id.* at 747. Of course, the theory of copyright infringement in *this* case is neither "dubious" nor "unprecedented." It was *affirmed by the Ninth Circuit*. And general access to a political film obviously warrants much more First Amendment protection than stopping one infringer from accessing code it is barred from copying. The *Garcia* court actually stated that the result would be different in a "garden-variety copyright infringement [case], such as seeking to restrain the use of copyrighted computer code." *Id.*; *see Craigslist Inc. v. 3taps Inc.*, 964 F. Supp. 2d 1178, 1185 (N.D. Cal. 2013) (targeted prohibitions on "access" to websites raise no "serious constitutional doubts"); *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 118 (2d Cir. 2010) ("The First Amendment does not . . . provide a license for copyright infringement.").

Moreover, as Rimini has already conceded, it cannot merely "access" Oracle's code without creating new RAM copies of that code "every time it start[s] up or [runs] Oracle software." ECF No. 1139 at 11:7–11. While reading a book or viewing a film do *not* involve copying a competitor's source code, Rimini's desired actions here do.

* * *

None of Rimini's litany of merits-related arguments presents a "serious legal question." Mot. at 17:24. None presents the required "strong showing" for Rimini's likelihood of success on appeal. *Nken*, 556 U.S. at 434. Moreover, the fact that the Ninth Circuit issued a stay in Rimini's prior appeal does not support a stay here. To the contrary, Rimini's likelihood of success is *much less* this time, since the Ninth Circuit has already overturned what it saw as problematic (the state law convictions) and *affirmed* in full the copyright infringement liability supporting the present injunction. Nothing about the Ninth Circuit's stay or opinion suggests there is any merit to Rimini's current arguments for a stay. And the fact that Rimini raised these challenges in the prior appeal and the Ninth Circuit did not accept them or impose any limit on the appropriateness or scope of the injunction on remand further supports the conclusion that this Court's repeated rejection of these arguments is correct.

2. Rimini Fails to Show It Will Suffer *Irreparable* Harm Absent a Stay

Rimini previously argued (multiple times) that it would be irreparably harmed by this Court's injunction. But this Court has rejected that argument (multiple times), finding that:

> [T]here is no evidence that Rimini Street would be harmed by an injunction that enjoins and restrains future copyright infringement or using the materials gained from its infringement . . . .

ECF No. 1164 at 9:3–5; *see also* ECF No. 1094 at 3:27–4:6; ECF No. 1049 at 8:3–7. Rimini's current motion adds nothing new. Mot. at 18:10–11 (admitting this Court "has previously said that Rimini 'would [not] be harmed by an injunction'" (quoting ECF No. 1164 at 9:3–4)). Rimini again has failed to explain how the injunction irreparably harms its current business model. Because Rimini's arguments do not come close to meeting *its burden* to show that it "more likely than not" will suffer "irreparable harm" if the injunction stands, the stay must be denied. *Childs*, 2012 WL 12875370, at *3.

As before, Rimini claims (1) that it will suffer a constitutional violation, (2) that the injunction is vague and overbroad (again), (3) that Oracle might enforce the injunction against Rimini in bad faith, and (4) that it will suffer compliance costs absent a stay. Each argument is meritless. The injunction is necessary because *Rimini* "irreparably injured Oracle's business reputation and goodwill," ECF No. 1164 at 6:6–9; Rimini's attempt to paint itself the victim of the injunction against its misconduct should fail yet again.

First, Rimini claims that it can satisfy the irreparable-harm showing merely by alleging that the injunction violates the First and Seventh Amendments. Mot. at 18:13–23. But as Oracle showed (ECF No. 1139 at 1:20–3:17, 5:4–8; *supra* Section II.C.1), and the Court determined in issuing its injunction (ECF No. 1164), Rimini has *not* demonstrated any such violations.

Moreover, Rimini points to no authority (because there is none) that states that a *rejected* allegation of constitutional violation may support staying a *permanent* injunction. The only case it cites, *Goldie's Bookstore, Inc. v. Superior Court*, *reversed* a preliminary injunction issued by a federal court to halt the application of an allegedly unconstitutional state law. 739 F.2d 466, 472 (9th Cir. 1984). The law in question guaranteed an automatic stay in some but not all landlord-tenant suits and was attacked on equal-protection grounds, among others. The federal district court issued an injunction barring application of the law after a state court had denied a stay pending appeal in a landlord-tenant suit. Even though the plaintiff alleged an imminent constitutional injury, the Ninth Circuit concluded that the likelihood of success was too slight and that principles of abstention counseled against federal court intervention. *See id.* Nothing in that case supports a stay here. This Court repeatedly has determined that Rimini's supposed constitutional claims are meritless. Rimini can cite no authority for the proposition that once a court has rejected a party's constitutional claims *on the merits*, as this Court has done repeatedly with Rimini's claims, the mere repeated allegation of constitutional harm establishes irreparable harm to support a stay. Otherwise, permanent injunctions could never be enforced before an appeal in *any case* where a party raised the prospect of a constitutional violation (even if that argument was already rejected). Indeed, the *Goldie's Bookstore* Court noted that if a claim "does not implicate" the relied-on constitutional provision, or if "the constitutional claim is . . .

tenuous," the allegation will not even support a preliminary injunction. *Id.* Constitutional allegations already rejected by the Court do not constitute irreparable harm to justify a stay.

Second, Rimini resorts yet again to its failed assertions that the terms of the injunction are vague and overbroad. Mot. at 18:24–19:5, 19:27. But Rimini has objected to the terms of the injunction on numerous occasions (*see* ECF No. 1130 at 22:13–23:28), and, in granting the injunction, the Court necessarily overruled Rimini's objections. Compliance with an injunction properly tied to Rimini's own infringing conduct is not irreparable harm.

Third, Rimini argues that Oracle's potential "use" of the injunction in press releases or enforcement actions will irreparably harm Rimini. *See* Mot. at 19:8–20:12. This argument is both speculative and meritless.

Rimini's accusations about what Oracle *may* do provide no basis for any stay. Rimini asserts that "Oracle *will surely* interpret [this Court's injunction] as broadly as possible, selectively quote, and use as an anti-competitive weapon to threaten and intimidate Rimini's clients" against Rimini's clients, Mot. at 19:8–9 (emphasis added), and that Oracle may use "the injunction to sow fear, uncertainty, and doubt in the marketplace," *id.* at 19:20–21. These guesses at what Oracle *may* do, and Rimini's mischaracterization of Oracle's prior press-releases quoting this Court's injunction as a "smear campaign" (*id.* at 19:14), are nothing but speculation. And "[s]peculative injury does not constitute irreparable injury." *Goldie's Bookstore*, 739 F.2d at 472. Rimini fails even to attempt to explain how Oracle quoting this Court's orders would "sow" any "fear, uncertainty, or doubt." There is no doubt: Rimini has infringed Oracle's copyrights, and is now enjoined from continuing to do so.

Rimini asserts "Oracle will attempt to use the injunction to challenge conduct that is currently at issue in *Rimini II*" and will bring "contempt proceedings." Mot. at 19:23–24; *id.* at 20:11. In other words, Rimini believes that Oracle will act in bad faith, *i.e.*, by seeking to go beyond the clear terms of the injunction if it is not stayed. But Rimini provides no basis whatsoever for that speculative aspersion. And Rimini does not even attempt to explain how enforcement of a properly issued injunction could lead to irreparable harm. All Rimini can do is cite three cases denying injunctions in the face of circumstances vastly different than those

present here. *See id.* at 19:28–20:10. The prospect that Oracle may enforce its legal rights as determined by this Court cannot support a finding of irreparable harm. Rimini's circular theory that an allegedly defective injunction will cause harm *because* it is legally defective would entitle *every* party that challenges the legality of an injunction to obtain a stay.

Fourth, Rimini repeats its argument that the costs it will have to expend "to comply with the injunction" constitute irreparable injury. Mot. at 20:13–14. Rejecting this argument, this Court has stated that Rimini's claims "that it will now incur substantial costs in complying with the injunction is not the kind of irreparable harm that warrants a stay." ECF No. 1094 at 4:6–12 (citing *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmbH*, 2015 WL 5051769, at *2 (S.D.N.Y. Aug. 26, 2015), *aff'd*, 843 F.3d 48 (2d Cir. 2016)). The Court correctly applied settled law that forbids finding irreparable harm based on compliance costs. *E.g.*, *Graphic Commc'ns Union v. Chi. Tribune Co.*, 779 F.2d 13, 15 (7th Cir. 1985) ("The fact that an order imposes a cost does not show irreparable harm."). If the opposite were true, "every order would be deemed to create irreparable harm, and it would be easy to get such orders stayed"—an impermissible result. *Id.*; *Church & Dwight*, 2015 WL 5051769, at *2 (if costs of compliance justified a stay pending appeal, stays "would become routine, conflicting with the rule that such relief should be 'extraordinary'").

Even assuming compliance costs could, in some circumstances, establish irreparable harm, Rimini would have to show that its costs will be "so severe as to cause *extreme hardship* to the business or *threaten its very existence*." *Sterling Commercial Credit-Michigan, LLC v. Phoenix Indus. I, LLC*, 762 F. Supp. 2d 8, 15 (D.D.C. 2011) (emphasis added); *see ConverDyn v. Moniz*, 68 F. Supp. 3d 34, 47 (D.D.C. 2014) (even though "asserted losses, if accurate, would be significant," movant does not state that injunction will "force it out of business or even state with certainty that losses will be significant enough to force the business to operate at a loss").

The only evidence Rimini points to for its claim that its compliance costs constitute irreparable harm is the same declaration it relied on last time around: a conclusory assertion that complying with the injunction will cost between $1 million and $4 million a year. ECF 1168-4 at 1:19–26. But conclusory assertions regarding these purported costs—without identifying the

terms of the injunction that Rimini's current processes violate, which of Rimini's processes will need to be altered, or any details about how these allegedly necessary modification costs were estimated—cannot support a finding of irreparable harm. *See* ECF No. 1087 at 7:1–11. Further, the declaration is authored by Mr. Slepko, who may not credibly opine on these matters given his repeated denials of knowledge of the details of Rimini's support processes and his prior statements that have been contradicted by this Court's findings. *See id.* at 7:12–8:4 (redacted); ECF No. 1089 (under seal). Moreover, the declaration includes *no claim* that the costs (even if accepted) will lead to extreme hardship or threaten Rimini's existence. In fact, Rimini admits that the "modifications are *not expected* to adversely impact the ultimate outcomes required by Rimini's clients." ECF No. 1168-4 (Slepko Decl.) at 1:19–20 (emphasis added). That dooms this argument. *Sterling*, 762 F. Supp. 2d at 15 ("plaintiff provides no information whatsoever as to what effect, if any, this purported economic harm will have on its business").

And Rimini's own words erase any doubt on this score. Rimini told its investors in an SEC filing that it would incur additional expenses of no more than 2% of its net revenue to comply with the previous injunction—and the present injunction is even narrower. Polito Decl., Ex. 3 (Rimini St., Inc., Annual Report (Form 10-K), at 15 (Mar. 15, 2018)). Rimini's statements to this Court and the public show its compliance costs will have a *de minimis* effect on Rimini's business, even if its estimated $1 to $4 million in annual costs pending appeal were accurate.

Rimini's only other argument is its unsupported claim that it will be unable to recover the $1 to $4 million per year it may spend to comply with this Court's order—but a "serious effect" on the movant's business is required to find irreparable harm even in the face of truly "unrecoverable losses." *Sterling*, 762 F. Supp. 2d at 16; *see, e.g.*, *LG Elecs., USA, Inc. v. Dep't of Energy*, 679 F. Supp. 2d 18, 35–36 (D.D.C. 2010) ("Even assuming" economic damages are unrecoverable, "the financial impact [Rimini] claims it will suffer does not rise to the level of irreparable harm" because it will impact only "a miniscule portion of the company's worldwide revenues"). The effect must be serious, not merely "irretrievable" costs. *Mylan Pharms., Inc. v. Shalala*, 81 F. Supp. 2d 30, 42 (D.D.C. 2000); *see* ECF No. 1087 at 5:18 (rebutting ECF No. 1079 at 4:19–20).

As Oracle has already explained (ECF No. 1087 at 5:19–6:6) and this Court has already implicitly accepted by rejecting Rimini's argument based on increased costs (ECF No. 1094 at 3:4–12), the cases Rimini cites do *not* support the claim that unrecoverable losses alone are sufficient to show irreparable harm. *See Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996) (irreparable harm there included "loss of consumer goodwill"); *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010) (irreparable harm there arose from investigation, "debarment from public contracts," and other liability). And for good reason: if they did, then almost every injunction would be stayed.

Any hardship an infringer suffers in *complying with the law* is far outweighed by the harm to the copyright owner who suffers the infringer's trespass of his rights. *See Park Vill. Apt. Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011). That is particularly true where, as here, the defendant has no legitimate purpose for continuing its unlawful conduct, *Grokster*, 518 F. Supp. 2d at 1220, and has routinely represented that it is no longer engaged in that conduct, ECF No. 1164 at 9:6–7. If those claims are true, then any hardship associated with compliance should be *de minimis*. If they are not true, then any harm *Oracle* stands to suffer vastly outweighs Rimini's interest in staying the injunction.

3. Oracle Will Be Harmed By Rimini's Infringement if a Stay is Granted

Rimini gives short shrift to the harm that Oracle will suffer from a stay. Indeed, Rimini repeats the *exact same* arguments it raised to this Court in its prior motion for a stay and its opposition to the injunction for why Oracle will not suffer harm. *Compare* ECF No. 1168 at 21:7–22:25 *with* ECF No. 1069 at 10:1–11:15. Namely, it argues (1) Rimini has changed its process to cease its infringing conduct, (2) the injunction is "overbroad and unlawful," and (3) Oracle somehow delayed seeking an injunction. But these copied and pasted merits arguments against the injunction itself have been rejected by this Court, and do nothing to assuage the harm to Oracle if Rimini is permitted to continue infringing Oracle's copyrights.

First, Rimini falsely asserts that it has presented "*undisputed* evidence" that it no longer infringes. Mot. at 21:11. But Rimini admits later in the same paragraph that Oracle alleged "infringement related to the new processes." *Id.* at 21:21–26.

Oracle in fact contends that Rimini is *currently* infringing Oracle's copyrights, and Oracle also has consistently claimed that it is harmed by Rimini's infringement.

Rimini also misapprehends and misrepresents the purpose of an injunction. An injunction is an enforcement mechanism to prevent the enjoined party from continuing its unlawful conduct. *See Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943, 950 (N.D. Cal. 2009). Rimini cannot immunize its conduct from this Court's order simply by claiming it has developed new, non-infringing business practices. And injunctions are frequently issued despite discontinued misconduct so it "does not recur as soon as the case ends." *Grokster*, 518 F. Supp. 2d at 1222. While parties *may* attempt to "disprov[e] the risk of future infringement," Mot. at 21:14, Rimini misses the point that it has failed to do so here. Mere disputed claims that a party has stopped its infringing conduct do not *disprove* any risk of future violation. Moreover, the pending *Rimini II* litigation does not remove this Court's authority—explicitly recognized by the Ninth Circuit, *Oracle*, 879 F.3d at 964—to enjoin Rimini from continuing to infringe Oracle's copyrights. This Court has resolved *this* case, and it may enjoin Rimini's infringing conduct.

Second, and implicitly recognizing the above point, Rimini reveals its true argument for why a stay will not harm Oracle: the injunction itself is "overbroad and unlawful." Mot. at 22:5. But as Oracle explained in analyzing the first stay factor—and as this Court concluded in issuing the injunction and rejecting these same arguments (*e.g.*, ECF No. 1130 at 15:19–28)—the injunction is neither unlawful nor overbroad. So Rimini's argument that Oracle will not be harmed fails, as well. The Court should reject Rimini's attempt at bootstrapping its (meritless) merits argument to support this *independent* requirement for a stay.

Lastly, Rimini argues (again) that Oracle's "delay" in seeking an injunction weighs against Oracle. Mot. at 22:15–25. The Court has considered and rejected this argument, as well (ECF No. 1069 at 11:4–15; ECF No. 1079 at 7:1–9). Considering Rimini's past conduct—as determined by the Court and the jury—the risk of ongoing harm to Oracle from Rimini's infringement weighs against a stay.

4. The Public Interest Favors the Injunction, and It Disfavors a Stay

Rimini's arguments that the public interest favors a stay are without merit. This Court

already has determined that "issuing an injunction in this action 'ultimately serves the purpose of enriching the general public through access to creative works' by giving Oracle an incentive to continue to develop software for public use." ECF No. 1164 at 9:11–10:2 (quoting *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016)). Indeed, "[i]nadequate protections for copyright owners can threaten the very store of knowledge to be accessed." *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 287 (2d Cir. 2012). Protection of copyrights is thus "a vindication of the public interest." *Capitol Records, Inc. v. Thomas-Rasset*, 692 F.3d 899, 909 (8th Cir. 2012). Ignoring this Court's proper concern for incentivizing creation of useful works, Rimini cites *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1024 (9th Cir. 2016), which, while generally advising that competition is vital to the public interest, does *not* address competition based on copyright infringement. Mot. at 23:12. Recognizing this, Rimini reverts back to its unfounded argument that the scope of the injunction is too broad and "prohibits conduct far beyond" that which infringes Oracle's copyrights. Mot. at 23:17–27.

Rimini's only other argument is that potential contempt proceedings that would result from its violation of this Court's injunction will impose a burden on the judicial system. Mot. at 22:28–23:11. But the argument that "there is no reason to burden this Court and its limited resources with contempt proceedings before" the case is finally "resolved on appeal" (Mot. at 23:10–11)—if accepted—would justify staying *every injunction* pending appeal. Such a result is prohibited by the reservation of stays for truly "extraordinary" cases. *Shays v. F.E.C.*, 340 F. Supp. 2d 39, 41 (D.D.C. 2004). Enforcing the injunction favors the public interest by serving the goal of the Copyright Act to incentivize the creation of useful works.

D. The Court Should Enforce The Injunction Immediately

As before (ECF No. 1094 at 4:19–26), Rimini's request for a temporary stay while Rimini seeks a stay from the Ninth Circuit should also be rejected. "[L]ogic dictates that a court will seldom issue an order or judgment and then turn around and grant a stay pending appeal, finding, in part, that the party seeking the stay is likely to prevail on appeal, *i.e.* that it is likely that the court erred in issuing the underlying order or judgment." *Millennium Pipeline Co. v. Certain Permanent & Temp. Easements*, 812 F. Supp. 2d 273, 275 (W.D.N.Y. 2011) (alterations

omitted); *see Silverstein v. Penguin Putnam, Inc.*, 2003 WL 21361734, at *3 (S.D.N.Y. June 12, 2003) (denying motion to stay permanent injunction where court already "carefully considered" parties' arguments, and "[t]he decision was not arbitrary nor did the court abuse its discretion in entering the injunction").

While Rimini asserts that courts routinely grant requests to stay an injunction while the moving party seeks a stay from the appellate court, Mot. at 24:5–8, the law is clear that, where, as here, the movant has failed to satisfy the four-factor *Nken* test, no stay of any length is warranted. "Because the burden of meeting the standard [for a stay] is a heavy one, more commonly stay requests will be found not to meet the standard and will be denied." 11 Fed. Prac. & Proc. Civ. § 2904 (3d ed.).

That any stay pending the Ninth Circuit's consideration of Rimini's stay motion in that Court may be brief does not support Rimini's position. This Court should not issue a stay at all if the *Nken* factors are not satisfied. And in fact, the three months Rimini guesses (without support) the Ninth Circuit will take to consider Rimini's motion is *more time* than the sixty days Rimini requested (and this Court rejected) last time around. ECF No. 1094 at 4:18–26. In all events, the present motion for stay was filed two days after this Court's order granting the injunction, and Rimini's stated intention to file an emergency motion with the Ninth Circuit means "there is no reason for" this Court to issue a temporary stay. ECF No. 1094 at 4:23–26.

"To allow [a] defendant to continue to profit and benefit from its infringing work would violate the spirit and function of the copyright law." *Silverstein*, 2003 WL 21361734, at *3. This is especially true where the defendant should be "aware of the risk that its method of business could constitute a violation of the intellectual property laws and the consequences of any such violation." *Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc.*, 2007 WL 4262725, at *1 (M.D.N.C. Nov. 30, 2007) (denying motion to stay permanent injunction).

III. CONCLUSION

For these reasons, Oracle respectfully requests that the Court deny Rimini's motion.

Dated: August 30, 2018

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ *John A. Polito*
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CERTIFICATE OF SERVICE

I certify that on August 30, 2018, I electronically transmitted the foregoing **ORACLE'S OPPOSITION TO RIMINI'S EMERGENCY MOTION TO STAY ENFORCEMENT OF PERMANENT INJUNCTION PENDING APPEAL, OR ALTERNATIVELY FOR A TEMPORARY STAY** to the Clerk's Office using the Electronic Filing System pursuant to Local Rules Section 1C.

Dated: August 30, 2018

Morgan, Lewis & Bockius LLP

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